

1
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9

10

GREGORY NICHOLAS STESHENKO, No. C 09-5543 RS

11

Plaintiff,

12

v.

13

THOMAS MCKAY, et al.,

14

Defendants.

15

16

17 **ORDER GRANTING LIMITED
FURTHER DISCOVERY, VACATING
TRIAL DATE, AND SETTING
FURTHER STATUS CONFERENCE**

18

19

20

21

22

23

24

25

26

27

28

Plaintiff seeks to reopen discovery and, as a consequence, to continue the trial date.

Factors that may be considered when weighing a discretionary re-opening of discovery include:

“1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence.” *U.S. Ex Rel. Schumer v. Hughes Aircraft*, 63 F.3d 1512, 1526 (9th Cir. 1995) vacated on other grounds, 520 U.S. 939 (1997). While some of these factors inarguably weigh against granting plaintiff’s request, on balance, the interests of justice support allowing limited further discovery. Although it may be frustrating to defendants and witnesses who have arranged their schedules with the current trial date in mind, the cognizable

United States District Court
For the Northern District of California

1 prejudice resulting from a relatively short additional delay at this juncture is minimal, and is
2 outweighed by the interest in resolving issues on the merits.

3 The individual depositions plaintiff proposes to take will be allowed, as the potential for
4 discovery of relevant, non-cumulative evidence from such percipient witnesses is manifest. The
5 request to take a deposition of the College under Rule 30(b)(6) of the Federal Rules of Civil
6 Procedure is denied, without prejudice. If plaintiff remains of the view that such a deposition is
7 critical to his trial preparation he may, within one week of the issuance of this order, file a letter
8 brief not to exceed three pages, proposing a scope for such a deposition and explaining why it is
9 likely to obtain material evidence that is not cumulative to the discovery previously obtained by
10 plaintiff in this action. Defendants may file a responsive letter brief, also not to exceed three
11 pages, within one week thereafter.

12 Plaintiff may immediately serve the document requests and interrogatories attached as
13 exhibits to his motion. Defendants shall respond in such manner as is allowed under the Federal
14 Rules of Civil Procedure.

15 The existing trial date is vacated. The parties shall appear for a further status conference
16 on July 31, 2014 at 10:00 a.m., with the expectation that the earliest possible trial date will be set
17 at that time. The parties shall file a joint status statement one week in advance of that conference,
18 and shall include therein trial date proposals and any anticipated scheduling conflicts.

19

20

21 Dated: 5/1/14



22 RICHARD SEEBORG
23 UNITED STATES DISTRICT JUDGE

24

25

26

27

28